

# COMPETITION COMMISSION OF PAKISTAN

## ENQUIRY REPORT

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(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF ENQUIRY CONDUCTED AGAINST DRY AND ACID-LEAD  
BATTERY MANUFACTURERS FOR DECEPTIVE MARKETING PRACTICES**

BY

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FAIZ-UR-REHMAN & FATIMA SHAH

DATED: APRIL 19, 2017

## BACKGROUND

1. Mr. Saeed Mirza (the '**Complainant**') filed a complaint with the Competition Commission of Pakistan (the '**Commission**') against dry and acid-lead battery manufacturers (the '**Undertakings**') for an alleged violation of section 10 of the Competition Act, 2010 (the '**Act**'), i.e., Deceptive Marketing Practices.
2. The Complainant alleged that the Undertakings by not disclosing material information, i.e., product capacity, on their products and/or warranty cards are misleading consumers related to the character, properties, suitability for use, and quality of their products. It has been alleged that conduct of the Undertakings, *prima facie*, amounts to deceptive marketing practices in terms of Section 10 of the Act.
3. Keeping in view the above, the Commission initiated an enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Mr. Faiz-ur-Rehman, Assistant Director, and Ms. Fatima Shah, Management Executive, as enquiry officers (the "**Enquiry Committee**"). The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and submit an enquiry report by giving its findings and recommendations, *inter alia*, on the following:
  - (i) Whether the Undertakings are disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties, suitability for use or quality of goods in violation of section 10 in general and section 10 (2) (b) of the Act in particular?
  - (ii) Whether conduct of the Undertakings is capable of harming the business interest of other undertakings in violation of Section 10 (2) (a) of the Act?

## COMPLAINT, PRELIMINARY RESEARCH AND COMMENTS OF THE UNDERTAKINGS

4. In this part of the report, for ease of reference, the complaint and comments/reply of the Undertakings are discussed in brevity.

### I. THE COMPLAINT:

5. The Complainant submitted in his complaint that various Undertakings in the market do not write the battery capacity, i.e., 40AH, 100AH, 120AH, etc., on the body of the batteries, their packaging, or on the warranty card. It was further submitted that these Undertakings print self-generated numbers such as N120, CD200, etc., which do not

correspond with the actual battery capacity and that no relevant references have been given on their websites either. It was, therefore, alleged that such conduct of the Undertakings to conceal battery capacity was carried out by the Undertakings to cheat the regular customers.

6. The Complainant further alleged that the Undertakings also keep altering these self-generated numbers constantly by writing higher numbers each year and charge higher prices for the same product. It was submitted by the Complainant that the consumers, therefore, unknowingly use under or over charged batteries that result in damaging machinery and/or the batteries.
7. The Complainant stated in the complaint that it is an international practice to put the product capacity on top of the body of the battery. The Complainant also submitted pictures of international and domestic products in order to highlight the contrast. The Complainant, therefore, prayed to enforce on these Undertakings the practice of printing of battery capacity on their products, so as to enable general public to make an informed decision.

## II. PRELIMINARY RESEARCH:

8. The complaint was analyzed and preliminary research was conducted into the matter by the Enquiry Committee. The relevant market research depicted that provision of battery capacity is an important and material information which is essential to make an informed decision pertinent to purchase of products under investigation, i.e., dry and lead-acid batteries. After careful analysis, it was also established that battery capacity is one of the main determinants of the demand for such products as it highlights their suitability for use and hence, this information should be displayed clearly and conspicuously on the product's body, packaging, related marketing material, and the warranty cards, as it would have a major impact on the consumers' decision.
9. General market practice was also analyzed and it was discovered that such products are also sold without any packaging, i.e., these products are sold directly, where the consumers only get to see the battery body rather than its whole package in which these products are packed. Therefore, it was determined that it is absolutely essential that the battery capacity must be displayed clearly and conspicuously on the body of the battery. This would enable consumers to make informed decisions according to their needs as various batteries with differentiated capacities and other characteristics have their own distinctive suitability for use which includes their installation in automotive, UPS, generators, etc.
10. A detailed market research was conducted by the Enquiry Committee and as a result some of the brands were identified as operating in the market, the list of which is produced below:

- i. Atlas (AGS)
- ii. ACDelco

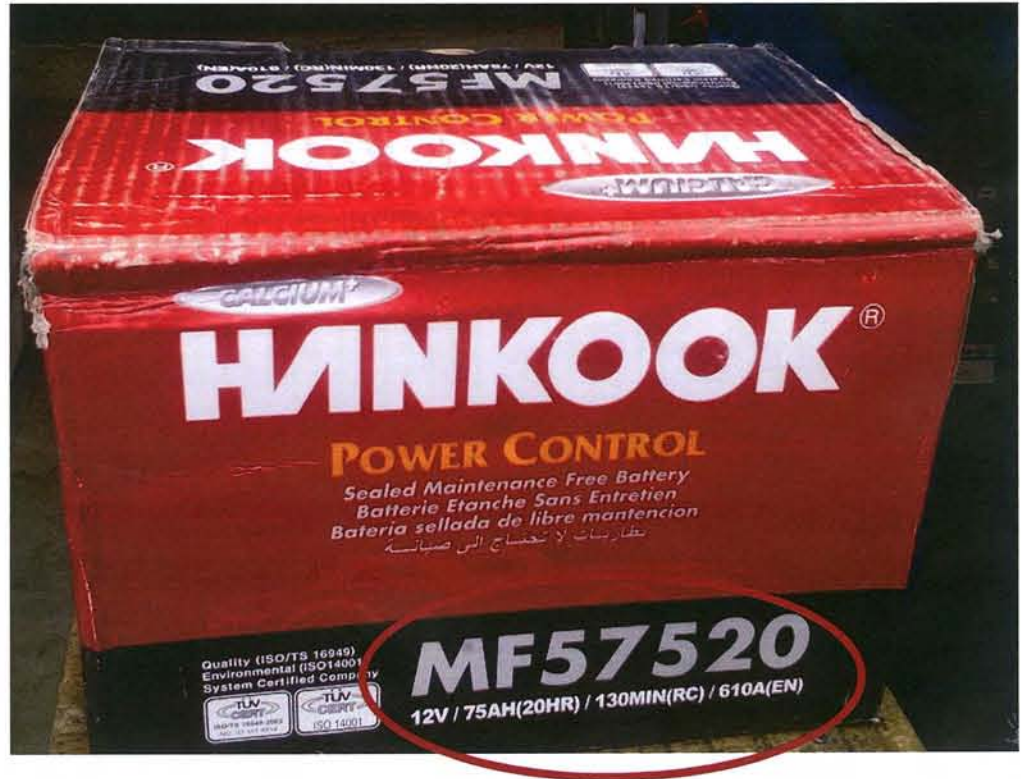
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- iii. Daewoo
- iv. EcoStar
- v. Exide
- vi. Fujika
- vii. Furukawa Battery (FB)
- viii. Hankook
- ix. Millat
- x. Osaka
- xi. Phoenix
- xii. Volta

11. During the process of research, it was also discovered that as per Complainant's assertions, printing of battery capacity on product's body, packaging, etc., is in fact an international practice. This was further confirmed by the fact that all the imported relevant products available in the domestic market, which included ACDelco and Hankook as per the list presented above, had also displayed product capacity on them. Some of the imported batteries available in the domestic market are shown below and the battery capacity displayed on the packaging and the body have been encircled :



Battery Box

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This Guarantee must be produced if a claim is made.

نام مشتری Name of Customer	
تاریخ خرید و فاکتور Date of Purchase & Bill No.	
<b>HANKOOK AP</b> کد باتری Battery Code No.	07
<b>MF60B24LS</b> نوع باتری Battery Type	
مدل و شماره خودرو Vehicle Model & Number	
تاریخ ادعا Date of Claim	

**GUARANTEE FOR PRIVATE VEHICLES**  
If your Hankook Maintenance Free Battery is found defective within 6 months of the date of purchase, the company will replace it free of charge.

**GUARANTEE FOR COMMERCIAL VEHICLES**  
If your Hankook Maintenance Free Battery is found defective within 3 months of the date of purchase, the company will replace it free of charge. If vehicles which fit the description of WAGONS, DELIVERY VANS, TAXIS, YELLOW CABS, RADIO CABS & MISC OTHERS SUCH AS GENERATORS will be considered as COMMERCIAL VEHICLES.

**TERMS OF GUARANTEE**  
The battery installed should be the recommended type and size. The battery should be in original condition and should not have been opened or burst. The electrical and charging system of your vehicle must be functioning properly. Recharging of the battery once the battery is recharged due to fault in the charging system of the motor vehicle is not included in the terms of this warranty. In case the battery is discharged the charges will have to be paid for charging.




- Excellent Design Handle
- Mag-Lo-Eye Indicator
- Special Sealed Cover
- Integrated-Computer-Design and Reinforced Container
- Advanced Center Lug and Cast-on-strap
- New Wrought High-Tin-Calcium Grid
- Upgrade Pasted-cured Plate
- Low Electric Resistance Envelop Separator

**Six Months Free Replacement Guarantee**

Warranty Card



Battery Front

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Battery Top



Packaging Side

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Packaging Front

12. However, while comparing with the batteries produced domestically and/or distributed to the customers by the Undertakings, it was observed that as per the complaint, they neither printed product capacity on their batteries nor on their product packaging, or the warranty cards, etc., which may lead to consumer deception. Consequently, in light of the above, the aforementioned Undertakings were called upon by the Commission to submit clarifications to the said complaint.

### III. UNDERTAKINGS' REPLIES:

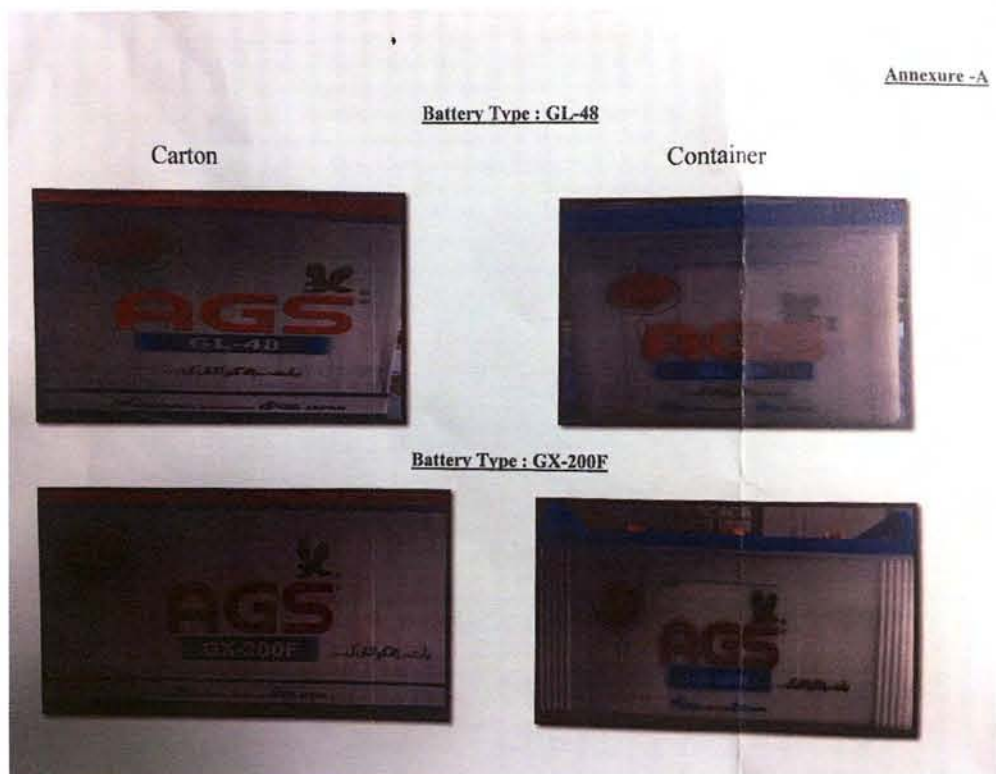
#### A. AGS BATTERY BY ATLAS BATTERY LIMITED (The 'Undertaking No.1')

13. The Undertaking No.1 belongs to the Atlas Group which had signed a technical collaboration agreement with Japan Storage Battery Co. Ltd., Japan (now known as GS Yuasa Corporation) in 1966, for production and sale of Japanese quality batteries in Pakistan. In 1969, this joint venture started production of the brand, 'AGS'. The Undertaking No.1 is now involved in manufacturing of a wide range of polypropylene batteries suitable for passenger cars, trucks, tractors, heavy vehicles, motor cycles, construction and road-building equipment as well as stationary and industrial applications.

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14. A letter demanding certain information was sent to the Undertaking No.1 on November 22, 2016, wherein a reply was requested in reference to the complaint cited above. Requisite reply was submitted vide letter dated November 28, 2016.
15. It was stated in the reply that the Undertaking No.1 is a law abiding entity and conforms to all laws and regulations, including Section 10 of the Act. It was also submitted that the numbers printed on their products body are merely a nomenclature and not its capacity in terms of amperes which is printed in accordance with general market practices. It was further submitted that it was in fact a wrong perception of the Complainant that these numbers represent battery capacity in any way. It was, therefore, stated that the Undertaking No.1 had never used these numbers in this reference either.
16. The Undertaking No.1 in its reply further stated that while realizing the probability of occurrence of this confusion, it took the voluntary initiative of printing the number of 'battery plates' that are present in a battery cell on its products and their packaging since July 2016. The Undertaking No.1 submitted following photographs of its products and their packaging.

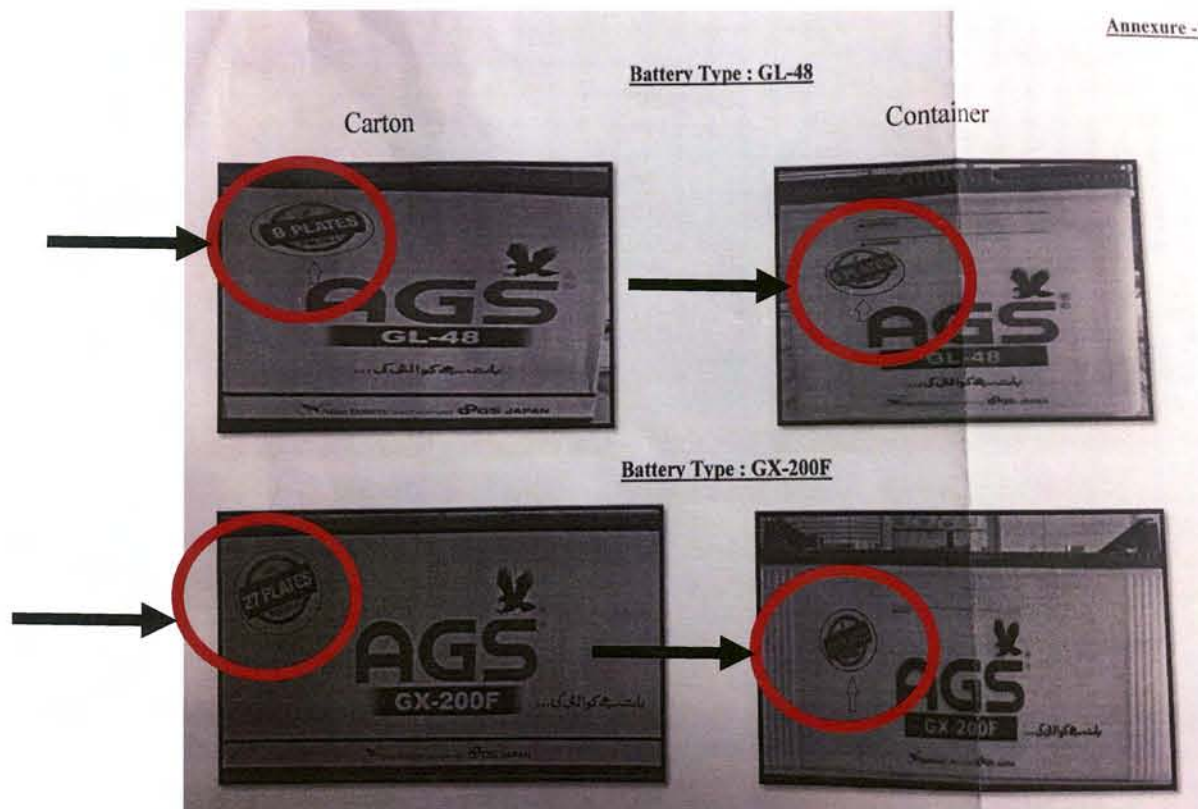


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17. It was also stated that it was a simple and informative disclosure on its part to communicate battery capacity to its customers. It was further claimed, that it was the only Undertaking in Pakistan that displays this information on battery containers and cartons. It was further added that in order to keep its customers aware, this information was being conveyed through its other marketing material, including the radio campaign that was going on at that relevant time.

18. The Undertaking No.1 replied that it also intends to conduct an exercise of classifying all its battery products as per Japanese Industrial Standards (JIS) and as a result, all such standards would be followed by printing of battery capacity (in amperes) in addition to the already mentioned number of battery plates on the product and its packaging. It was however indicated that it would be a time taking exercise, this activity may be completed by July 01, 2017.

#### **B. TREET DAEWOO BATTERY BY TREET CORPORATION LIMITED (The 'Undertaking No. 2')**

19. The Undertaking No. 2, Treet Batteries is a product of Treet Corporation Limited, a holding company of the Treet Group of Companies setup in 1952. The Group companies involved in various kinds of business are independent entities. The Treet

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Batteries is manufacturing and distributing the product, in collaboration with a Korean multinational company, Daewoo.

20. The Undertaking No. 2 was called upon by the Enquiry Committee vide letter dated November 22, 2017, wherein it was asked to furnish its comments on the complaint. The Undertaking No. 2 through a letter dated November 26, 2017, of their legal counsel, Cornelius, Lane & Mufti, requested for an extension. The requisite extension was granted vide a letter dated November 29, 2016. A reply was submitted on December 14, 2016, wherein it was submitted that the Complainant was under misconception as the Undertaking No. 2 was not in violation of Section 10 of the Act.
21. In this regard, they pointed out that, product capacity of this battery was already printed on its body and the relevant marketing material. It was further submitted in the reply that the Undertaking No. 2 was engaged in sale of various batteries of varied descriptions and capacities under the brand name Daewoo. The Undertaking No. 2 alleged that its products were sold to retailers and dealers to whom complete product description is given which includes, *inter alia*, battery capacity, model number, and suitability of its usage for the end consumers. The relevant material was attached with their reply.
22. It was, therefore, submitted that the detailed description given to the dealers and retailers demonstrated clearly that the customers were provided with complete information pertinent to their product. It was further submitted that battery capacity was also printed on the body of the batteries.
23. It was also claimed in the reply that battery capacity was clearly communicated to the consumers and that the Undertaking No. 2 in no way suggested that the numbers printed on the product body represented battery capacity as that information was displayed separately. Therefore, it was not involved in the distribution of false and misleading information and the complaint may be withdrawn as it lacked merits.
24. As the reply did not contain clear photographs of the batteries with product capacity displayed on them, the Undertaking No. 2, vide a letter dated January 05, 2017, was requested to share the required proof.
25. The Undertaking No. 2, vide their letter dated January 12, 2016, submitted the photographs of its batteries which contained battery capacity of their products in Volts, AH, and CCA. Some of the photographs have been reproduced below:

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26. It was, therefore, submitted by the Undertaking No. 2 that its conduct does not attract the provisions of the Act and that the inquiry against it may be withdrawn.

**C. ECOSTAR BY DWP GROUP (The ‘Undertaking No. 3’)**

27. DWP Group provides various products, services and solutions in the field of Consumer Electronics & Technology. EcoStar is one of the new brands of the Undertaking No.3. Intimation regarding the complaint was given vide a letter dated November 22, 2016, wherein necessary clarifications were demanded particularly with regard to the non-disclosure of material information, battery capacity, on body of the batteries manufactured and distributed by it.

28. A reply was received on November 29, 2017, wherein it was submitted that it has been engaged in business without any complaint. It was submitted that the Undertaking No.3 provided complete information on the battery body, packaging, warranty cards, user manuals, etc., pertaining to specifications of the battery type, such as 100AH (Model EB1-A100DG), 150 AH (model EB1-A150DG), etc. It was further submitted that no self-generated numbers, such as N120, CD200, etc., could be found on its products and their packaging.

29. The Undertaking No.3 submitted photographs of its products along with other technical information related to its various products and their specifications. The pictures of the products displayed product specifications clearly printed on them. The photographs, for ease of reference, are displayed below.



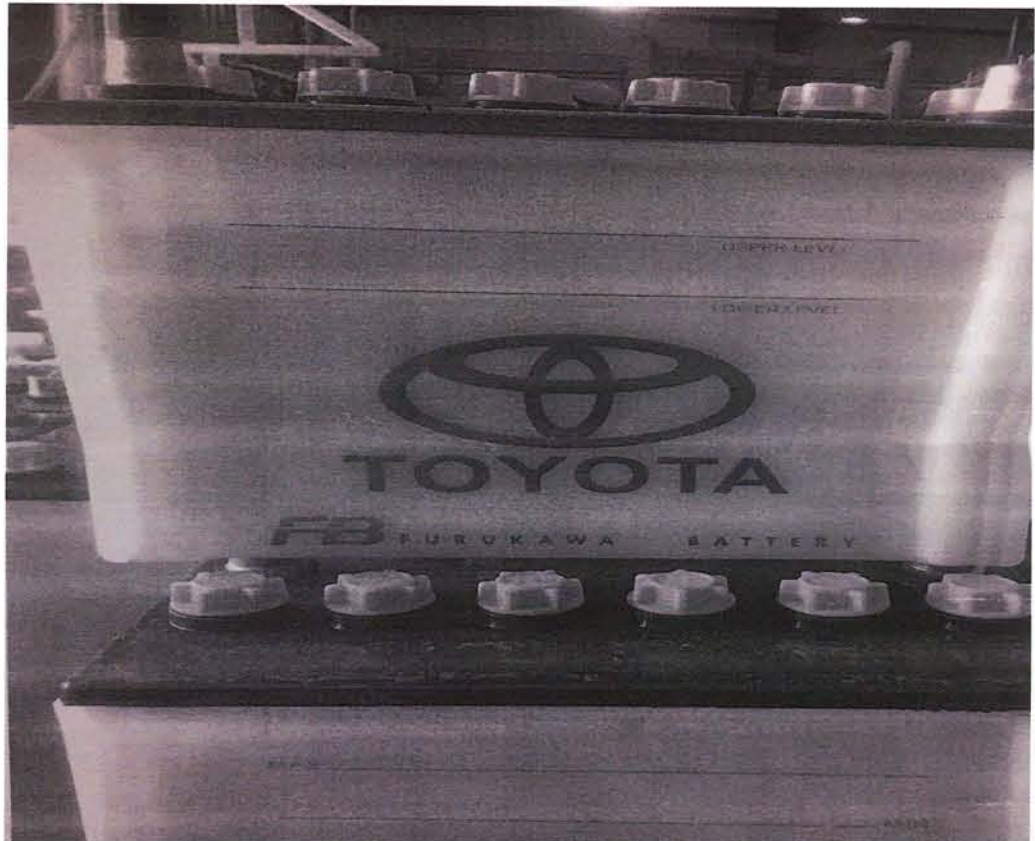
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in the reply that batteries containing identical AH capacity may have varied designation type corresponding to their High rate discharge characteristics.

33. In order to elaborate the aforementioned argument, the Undertaking No. 4 submitted extracts from JIS Specifications which showed that different types of batteries can have same AH capacity. It was further stated that according to the document, a manufacturer is allowed to use its own nomenclature, however, the specific designation should conform to the one as specified by the IS types exhibited in the list.
34. It further stated in its reply that price lists are given to wholesalers, retailers, etc., which contain thorough information pertinent to the batteries including battery capacity in AH and plates per cell. The relevant material was shared in the reply. Hence, it was alleged that no deception had been carried out by the Undertaking No. 4. Moreover, it was alleged that reputed companies like Toyota, Gandhara Nissan, etc., also do not require indication of AH capacity on batteries and instead demand type specification in conformity with the JIS Specification. Various pictures were shared in this reference out of which one is displayed below.



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35. The Undertaking No 4, therefore, prayed that the complaint may be withdrawn.

**E. VOLTA BATTERY, OSAKA BATTERY AND FUJIKI BATTERY BY PAKISTAN ACCUMULATORS (PVT.) LIMITED (The 'Undertaking No. 5')**

36. The Undertaking No. 5 is engaged in the production and distribution of various types of batteries for over twenty-one years. The brands manufactured by it include 'VOLTA' and 'OSAKA', whereas it is involved in distribution of a Japanese product, Fujika Battery as well. It is also engaged in export of its products to various countries around the world. The Undertaking No. 5 was informed regarding the enquiry and was asked for its comments to the complaint vide letter dated November 22, 2016. The Undertaking No. 5, through its letter dated November 29, 2016, requested for extension which was granted by the Commission.

37. The Undertaking No. 5, vide their letter dated December 09, 2016, submitted that it was not engaged in deceptive marketing practices. As per industry practice, it provided important information, such as product capacity, number of plates per cell, retail price and applicable taxes, on its price lists. It was further submitted that it was also willing to comply by the observation made in the complaint, i.e., printing of battery capacity in AH along with aforementioned information on the batteries.

38. It was, however, prayed that the Undertaking No. 5 alone must not be charged by the Commission out of the whole industry for non-disclosure of this information on the battery bodies. As per Sales Tax Act, 1990, battery products do not fall in the ambit of 3<sup>rd</sup> Schedule which necessitates printing of product prices and relevant taxes on the products.

39. The Undertaking No. 5 reiterated that it was willing to print the required information on its products, however, it suggested that such order must be enforced on all relevant players in the industry.

**F. MILLAT BATTERY BY MILLAT INDUSTRIAL PRODUCTS LIMITED (The 'Undertaking No. 6')**

40. The Undertaking No. 6 is a manufacturer of lead acid battery. Its plant equipment and technology was acquired from M/s Jungfer Battery Technology of Austria. The Undertaking No. 6 is a subsidiary of Millat Tractors Limited which manufactures Massey Ferguson tractors in Pakistan. The Undertaking No. 6 was called upon vide a letter dated November 22, 2016, wherein it was requested to submit its comments and necessary clarifications on the complaint received by the Commission.

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41. The Undertaking No. 6 made its submission vide letter dated November 26, 2016. It claimed that the battery industry in Pakistan is controlled by three to four major battery manufacturers with around 90% of the market share. It was alleged by the Undertaking No. 6 that these major players had been printing model numbers on their products for a very long time and at the time everyone was aware of the fact that these numbers did not represent battery capacity.
42. It was further alleged that it owned only roughly 3% of the market share. It was submitted in the reply that the rules and standards were set by major market players, whereas the smaller players such had to follow those rules. In reference to the Complainant's assertion pertinent to unavailability of this vital information on websites, the Undertaking No. 6 submitted that it was a mere allegation as it provided complete information regarding the specifications of its products on its websites as well as its brochures that were made available to the retailers. Relevant documentary proof was submitted by the Undertaking No. 6 in this regard.
43. It was, therefore, submitted that it was willing to offer complete cooperation to the Commission on the matter of improvement of general market practices.

**G. PHOENIX BATTERIES BY CENTURY ENGINEERING INDUSTRIES (PRIVATE) LIMITED (The 'Undertaking No. 7')**

44. The Undertaking No. 7 commenced its operation in Karachi in 2005. It is involved in manufacturing of SLI lead acid automotive batteries as a part of Jawed Metal Industries (Pvt) Ltd operating in technical collaboration with Kukje Industry Battery Co. Ltd. Korea. The Undertaking No. 7 was also called upon to furnish its reply, vide letter dated November 22, 2016, in reference to the complaint by the Complainant.
45. The Undertaking No. 7 submitted its reply vide a letter dated November 29, 2016, wherein it was stated that it provided all crucial technical information which included number of plates per cell, AH, dimensions, reserve capacity, etc., on its pricelist. It was further stated in their reply that the nomenclature used on the product and its packing is used for the purpose of product identification and trade number. The pricelist was also submitted along with the reply. However, no clarification was given pertinent to lack of printing of material information on the product's body and the remaining marketing material.

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46. As mentioned in Para 3. *ibid*, the mandate of this enquiry is as follows:

**“Whether the allegations leveled against the Undertakings under the complaint constitute a *prima facie* violation of Section 10 of the Act?”**

47. For the purpose of this enquiry report, it is necessary to determine whether omission of material information, such as insufficient labelling, constitutes to be an act of deceptive marketing practices. In order to conclude that, relevant portions of Section 10 of the Act are reproduced below:

*10. Deceptive marketing practices. — (1) No undertaking shall enter into deceptive marketing practices.*

*(2) the deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to—*

*(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;*

*(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;*

48. As discussed in paragraphs 8 and 9 *ibid*, dry and lead-acid batteries are primarily used in automotive, UPS, generators, etc. Moreover, the selection of various types of battery is based on the purpose of its use. For example, a vehicle of high engine capacity would require a high capacity battery. Similarly, power usage in a household setting would determine the capacity of a battery required to power a household. It has also been observed that various vehicle manufacturers print the capacity of battery required, especially in terms of ampere, which would be appropriate for their respective cars.

49. However, when a consumer demands a battery of certain ampere capacity, the local batteries do not have their respective capacities printed on them. In case of some batteries, the capacity is mentioned on its packaging and not on the body, whereas in case of other batteries, capacity is neither printed on the packaging nor on the body. Furthermore, these batteries may also be recycled. In this case, the batteries are not sold in their respective original packaging and therefore, the battery is sold directly to consumers. In addition to this, in various cases, when the consumer is not aware of their specific requirement, they usually seek the dealer's assistance in selection of batteries.

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50. In all of the situations specified above, the consumer is unaware of the capacity of battery it is acquiring, increasing the likelihood of consumer deception. The omission of this information may not only result in purchase of incorrect battery, but the consumers may also be deceived into buying a battery that may not be suitable as per their requirement. Moreover, the consumers may also be charged higher for a lower capacity battery.
51. Consequently, use of an unsuitable battery may affect the battery life itself, forcing the consumers to purchase batteries more frequently than required. Moreover, the use of unsuitable batteries have the ability to damage the items they are used in, e.g., automotive engines, UPS, etc., consequently damaging the machinery/electronics they are employed for. Additionally, lack of such material information and due to ambiguity of battery capacity, getting warranty claims also becomes a major hassle. Therefore, the capacity of battery is a material information which has the ability to impact consumers buying decision and therefore, should be displayed clearly and conspicuously on all forms of marketing material which includes the product itself, its packaging, the promotional material (brochures, etc.), warranty cards, etc.
52. According to “Batteries and Accumulators (Placing on the Market) Regulations: Compliance and Guidance”<sup>1</sup> followed in the UK and rest of the European Union, below are the capacity labelling requirements for batteries:

**“Capacity labelling**

*In addition to the above requirements it is also a requirement that the capacity for all portable and automotive batteries is indicated on them in a visible, legible and indelible form.*

*The Commission Regulation, Annex II Part B (1), states that “The rated capacity\* and the cold cranking performance”, of automotive batteries (lead-acid starters) shall be measured according to standard IEC 60095-1/ EN 50342-1. Article 3.2 of the Regulations states; ‘The capacity of automotive batteries and accumulators shall be expressed in “Ampere hour(s)” (Ah) and “Cold Cranking Amperes” (A), using both these abbreviations’.*

*The Regulation requires that all automotive batteries and accumulators shall be marked with a label containing the information set out in the Annex III, Part B, (1) the rated capacity\* as stated and detailed above in Annex II Part B (1), and the value, as set out in Annex III Part B (2), of the rated*

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<sup>1</sup> <http://www.bbif.co.uk/legislation/>

*capacity and the cranking current displayed as an integer with a level of +/- 10% accuracy of the nominal value. In Annex IV Part B, capacity labels of automotive batteries and accumulators shall comply with the following requirements; (a) the label shall cover at least 3% of the area of the largest side of the automotive battery, up to a maximum of 20mm X 150mm (H x L), and; (b) the label shall be located on the battery, on one of the sides of the battery, excluding the bottom side."*

It further states,

*"It is an offence under the Regulations to; .....(inter alia)  
.....placing on the market unlabelled or incorrectly labelled batteries;"*

53. Therefore, taking into consideration the international standards on labelling, it can be established clearly that battery capacity is a crucial information that has to be made clearly available to the consumers on all mediums. Also taking into consideration the nature of the product, i.e., dry and lead-acid batteries, in conformity to the rules set out by the standards mentioned above, it is necessary that this information must not only be printed on marketing material, product packaging, etc., but also the body of the batteries.

54. In this reference, the U.S. Federal Trade Commission (FTC), explains how omission of material information also amount to deceptive marketing practices. According to Federal Trade Commission Act (FTC) Policy Statement<sup>2</sup>, "*Section 5 of the FTC Act Declares Unfair or Deceptive Acts or Practices Unlawful*", describe an act of deception in the following manner,

*"An act or practice is deceptive where:*

- A representation, omission, or practice misleads or is likely to mislead the consumer;*
- A consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and*
- The misleading representation, omission, or practice is material."*

55. Moreover, it states further<sup>3</sup>,

*"<sup>4</sup>A misrepresentation is an express or implied statement contrary to fact. A misleading omission occurs when qualifying information necessary to*

<sup>2</sup> <https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf>

<sup>3</sup> [https://www.ftc.gov/sites/default/files/attachments/training-materials/policy\\_deception.pdf](https://www.ftc.gov/sites/default/files/attachments/training-materials/policy_deception.pdf)

prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed. .... Omissions may also be deceptive where the representations made are not literally misleading, if those representations create a reasonable expectation or belief among consumers which is misleading, absent the omitted disclosure.

Non-deceptive emissions may still violate Section 5 if they are unfair. For instance, the R-Value Rule, 16 C.F.R. 460.5 (1983), establishes a specific method for testing insulation ability, and requires disclosure of the figure in advertising. The Statement of Basis and Purpose, 44 FR 50,242 (1979), refers to a deception theory to support disclosure requirements when certain misleading claims are made, but the rule's general disclosure requirement is based on an unfairness theory. Consumers could not reasonably avoid injury in selecting insulation because no standard method of measurement existed.

56. Therefore, as pointed out by the Complainant; where there is lack of clear representation of material information, such as battery capacity; and where there is presence of randomly generated numbers printed on battery body, such as N120, CD200, etc.; the likelihood of consumer deception is very high. As battery capacity, in terms of AH, CAA, V, etc., demanded by the international standards mentioned above, in fact qualifies to be 'material information' which has a direct impact on consumer decision making process, since it is battery capacity that determines the suitability for its use. Moreover, it is also reasonable to assume that printing of randomly generated numbers in absence of the other material information may also mislead the consumer into believing that such numbers represent battery capacity.
57. Such an act, therefore, would not only constitute distribution of false or misleading information to consumers, related to the price, character, properties, suitability for use, or quality of goods, but also lead to distribution of false or misleading information that is capable of harming business interests of another undertaking. Unless and until the consumer is not clearly made cognizant of the information pertinent to the capacity, an appropriate price and suitability for use of a particular battery, the probability of consumer injury will remain high. Due to imperfect information with respect to the aforementioned characteristics of a battery, consumer are prone to selecting a battery which they would not have chosen otherwise, also to the detriment of competing undertakings.

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58. The Competition Bureau, Government of Canada, also acknowledge the importance of appropriate labelling and its contribution toward consumer decision making process. In this reference, the authority states<sup>4</sup>,

**Labelling**

*The Consumer Packaging and Labelling Act, Precious Metals Marking Act and Textile Labelling Act are regulatory statutes. They prohibit false or misleading representations in specific sectors, namely pre-packaged consumer products, articles made of precious metals, and textiles and apparel. These laws set out requirements for basic, standardized labelling information, such as bilingual product descriptions, metric measurement declarations and dealer identity, all of which help consumers to make informed choices.*

**Consumer Packaging and Labelling Act**

*The Consumer Packaging and Labelling Act prohibits false or misleading representations on prepackaged consumer products and requires that these products bear accurate and meaningful labelling information to help consumers make informed purchasing decisions. The Act also sets out specifications for mandatory label information such as the product's name, net quantity and dealer identity.*

Therefore, it can be concluded from the excerpts above that appropriate labelling is a material information, omission of which may lead to a distorted purchasing process. Moreover, product labelling should be done in such a way that it makes the consumer clearly aware of what they are purchasing pertinent to the characteristics, quality, price, and suitability for use of that product.

59. A similar issue has been discussed in one of the orders passed by the Commission, i.e., “*In the matter of show cause notices issued to paint manufacturers*”<sup>5</sup>, wherein it was observed that,

*“Accurate disclosure of important terms and conditions allows consumers to compare services/products offered by one or multiple providers and weigh the different terms being offered in making decisions about purchase. In the absence of information pertaining to the value of rebates on price of the paint the ordinary consumer cannot be expected to adequately compare the two varieties of paint as the true price differential is not known at the time of purchase.”*

<sup>4</sup> <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02776.html>

<sup>5</sup> <http://cc.gov.pk/images/Downloads/token-paints-order.pdf>

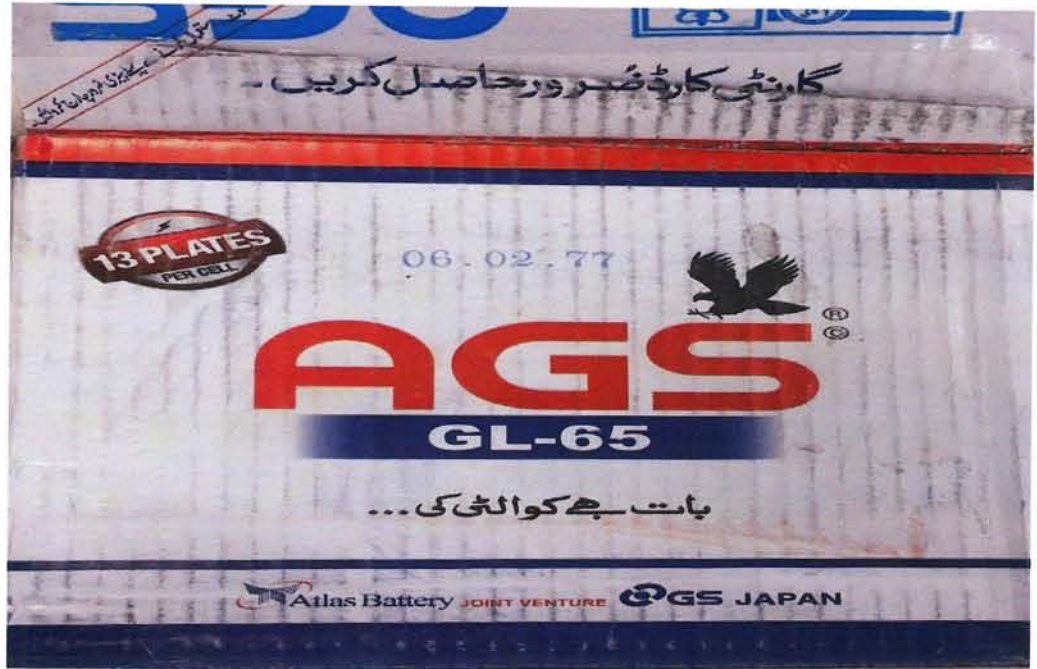
60. Applying the basic notion discussed in the excerpt referred to above to the case in hand, it can be concluded that omission of material information, such as display of battery capacity on all marketing material including battery body and packaging, the consumer would be unable to compare and contrast the quality, suitability for use and price of the products. This may then lead to a distorted decision causing not only monetary loss to the consumer, but also other losses caused by physical damages incurred upon the items they are used in. Moreover, such distorted decision would also lead to harming business interests of other competing undertakings in the market.

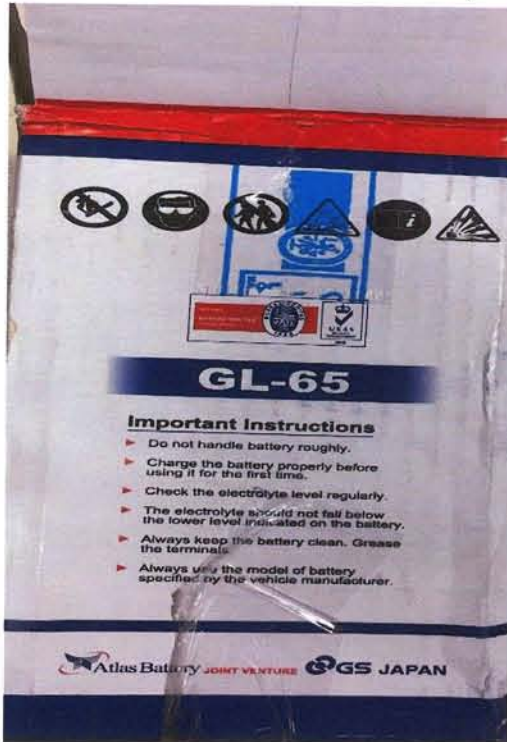
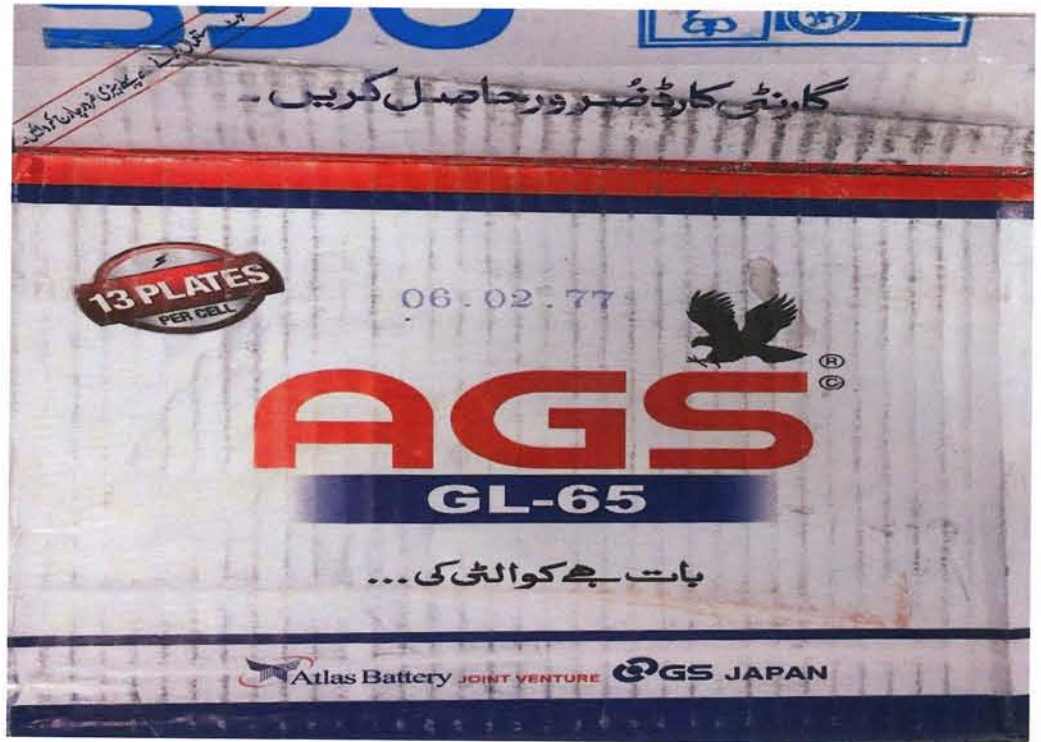
## FINDINGS & CONCLUSION

61. The products, their packaging and other available marketing material were acquired for the purpose of this enquiry report which were thoroughly analyzed in light of Section 10 of the Act.
62. Taking into consideration the observations made above, it will now be determined whether the Undertakings, by omitting material information such as battery capacity, are involved in violation of Section 10 of the Act or not.

### A. AGS BATTERY BY ATLAS BATTERY LIMITED (The 'Undertaking No.1')

63. Below are the pictures of the product, packaging and warranty card of Undertaking No. 1.

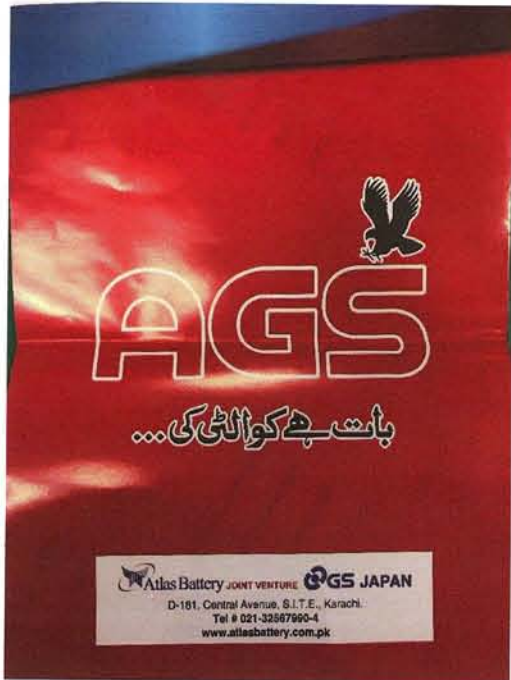




Battery Packaging

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بیٹری کی گارنٹی حاصل کرنے کیلئے فرم سے وقت مندرجہ ذیل تصدیقات ضرور مکمل کریں۔  
 بیٹری کی گارنٹی کا دورہ کے بغیر کوئی بھی ترمیم قبول نہیں ہوگا۔

1۔ گارنٹی کا دورہ ہو جو کہ بیٹری کے ساتھ بھیجا گیا تھا اور جس پر بیٹری کی تفصیل اور سیریل نمبر لکھے ہوئے ہیں۔  
 2۔ کارڈ پر درج فرم اور تاریخ اور تاریخ واپسی ضرور درج ہوں۔ 3۔ کارڈ میں کسی قسم کا ردعمل نہ لکھا گیا ہو۔  
 4۔ ڈیڑھ گھنٹہ سے زیادہ چوکی ایک کاپی بیٹری سیریل نمبر کے ایک ٹیپ کے اندر رکھیں اور سال کر دیں۔

فرم نمبر: \_\_\_\_\_  
 فرم کا نام: \_\_\_\_\_  
 گارنٹی کی مدت اور تاریخ کی قوت: \_\_\_\_\_  
 گارنٹی نمبر: \_\_\_\_\_

بیٹری کا نمبر: 06.02.77  
 بیٹری کا سیریل نمبر: 01549276  
 ڈیڑھ گھنٹہ کا نمبر: \_\_\_\_\_

بیٹری کی قسم: GL-65  
 بیٹری خریدنے کی تاریخ: \_\_\_\_\_  
 بیٹری کی خریداری کی تاریخ: \_\_\_\_\_

Warranty Card



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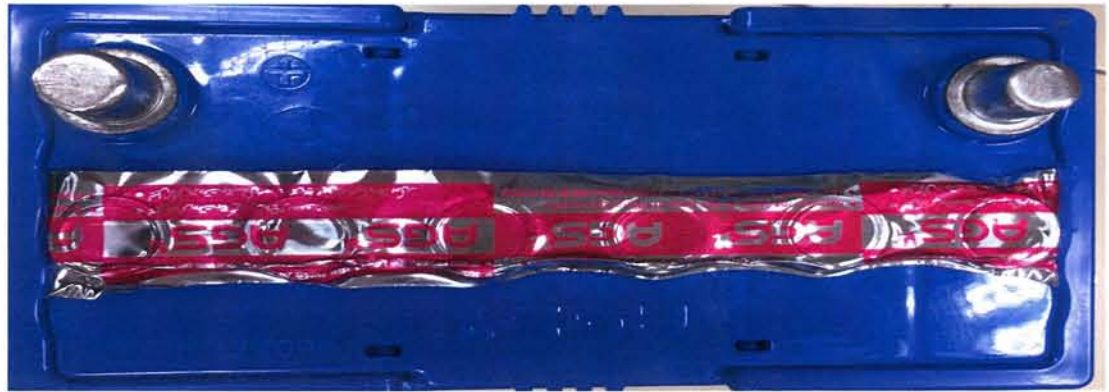
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### Battery Body

64. As discussed in paragraphs 13 to 18 above, the Undertaking No 1, as per the complaint and findings of the Enquiry Committee, acknowledged the fact that it does not print product capacity in terms of volts, CAA or AH on its product's body or packaging or warranty cards. This fact was also confirmed by taking into consideration the product and its marketing material presented above. The Undertaking No 1 does, however, display number of plates present in its product. Nonetheless, lack of presentation of product capacity in terms of AH and volts amounts to omission of material information, as provision of information pertinent to plates alone is not sufficient for an ordinary consumer to determine the effectiveness or suitability for use of a battery. This act, therefore, constitutes *prima facie* violation of Section 10 of the Act, in particular subsection (2), clause (b), as it is involved in distribution of false or misleading information to the consumers, related to the price, character, properties, suitability for use, and quality of its goods.

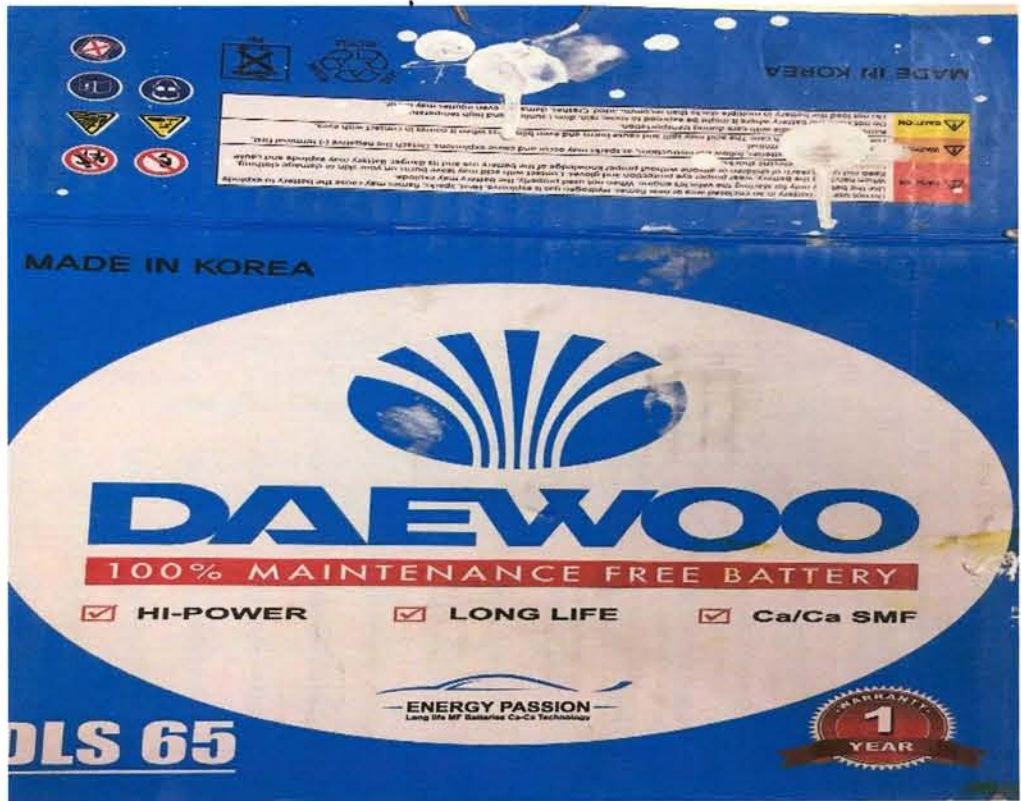
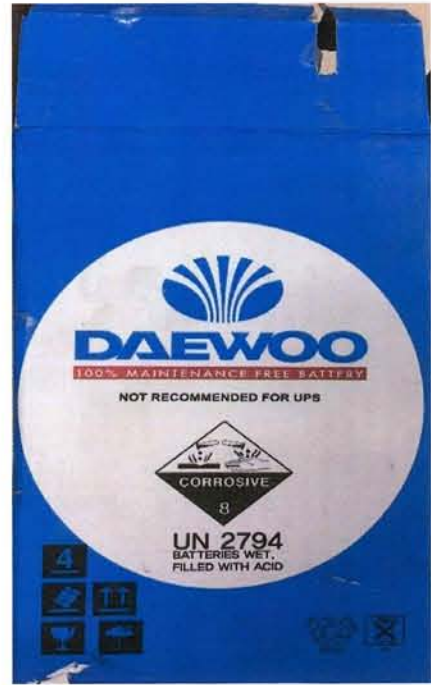
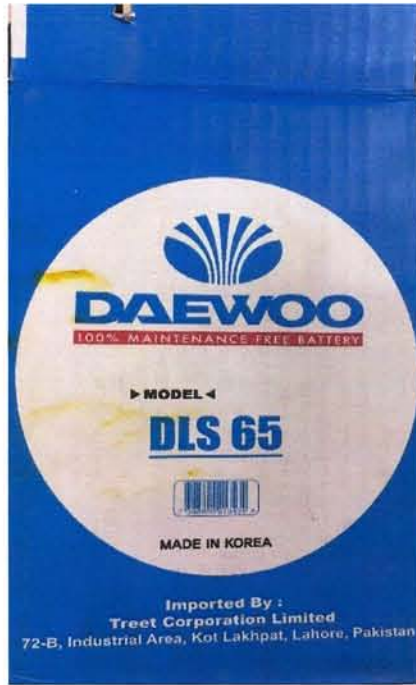
### B. TREET DAEWOO BATTERY BY TREET GROUP OF COMPANIES (The 'Undertaking No. 2')

65. Below are the pictures of the product, packaging and warranty card of Undertaking No. 2.



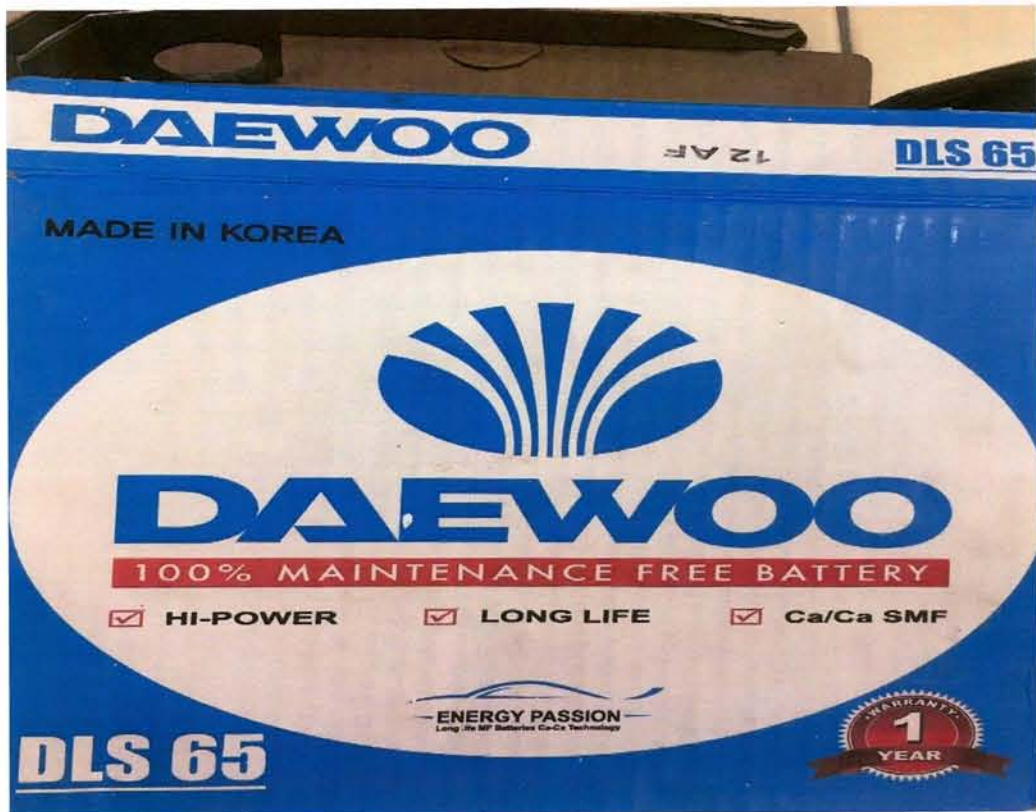
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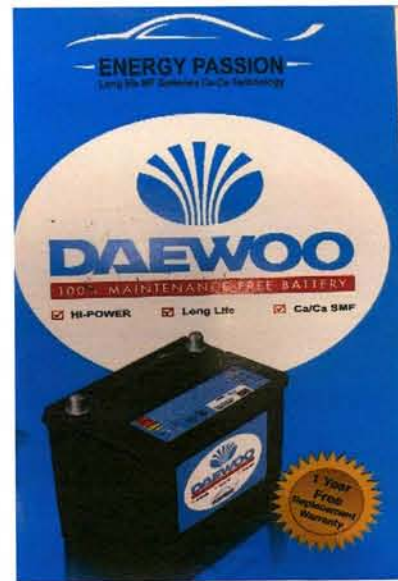
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*[Handwritten signature]*



Battery Packaging

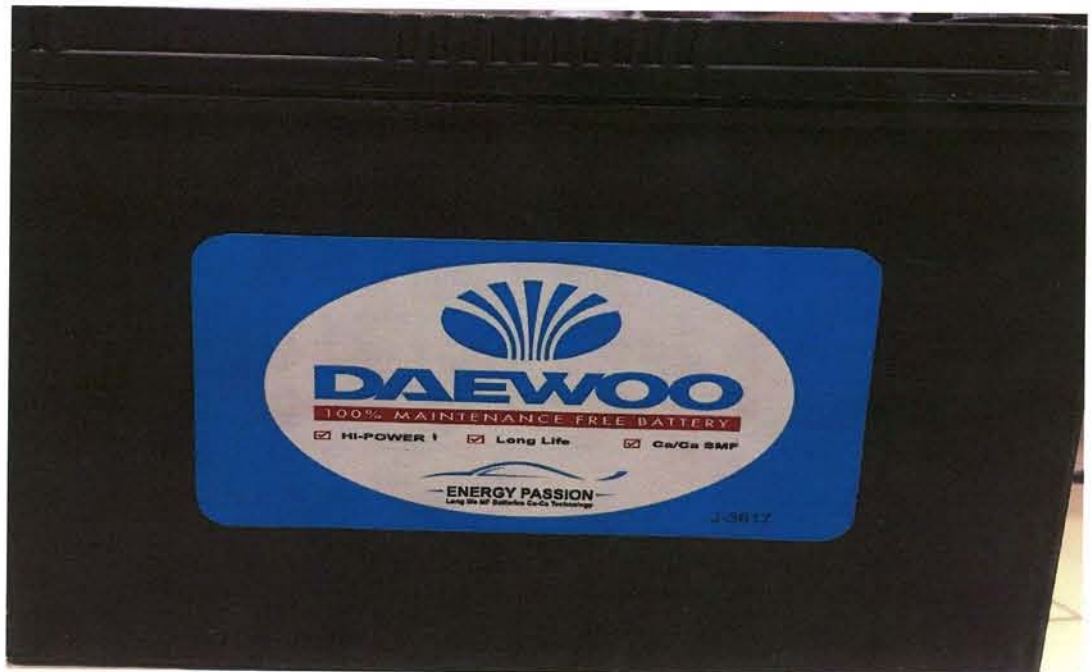
WARRANTY CARD	
Customer Name	
Serial Number	DMF-J 3817
Battery Model	DLS 65
Date of Purchase	
Date of Claim	
Invoice Number	12 AF
Vehicle Reg. No.	
Dealer's Name/Stamp	
Dealer's Signature	
<b>TERMS &amp; CONDITIONS</b>	
1. Warranty period is limited to 1 year from the date of purchase.	
2. A copy of the invoice must be attached with the warranty card for claim.	
3. The battery must be used for the purpose specified by the manufacturer. This battery is not recommended for UPS.	
4. Any tampering with top cover label or serial number of the battery will result in invalidity of the warranty.	
5. Mishandling, improper use/fitting will result in invalidity of the warranty.	
6. The warranty is limited to manufacturing faults only. It does not cover malfunctioning of the battery caused due to accidental damage or technical problems with charging equipment.	
7. If claim is accepted, the warranty for the replaced battery will only be valid for the remaining period of the first battery's warranty.	



Warranty Card

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**Battery Body (Top & Front)**

66. As discussed in paragraphs 19 to 26 above and taking into consideration the pictures displayed above, the Undertaking No 2. exhibits, clearly and conspicuously, all relevant and material information on the battery body. However, it has failed to display the material information on the outer packaging of the product which is a necessary component of the marketing material. Therefore, the market practices of the Undertaking No 2 amount to *prima facie* violation of Section 10 of the Act, in particular sub-section (2), clause (b), as it is involved in distribution of false or misleading information to the consumers, related to the price, character, properties, suitability for use, and quality of its goods.

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C. ECOSTAR BY DWP GROUP (The 'Undertaking No. 3')

67. Below are the pictures of Undertaking No. 3's product and its packaging:



Battery Body



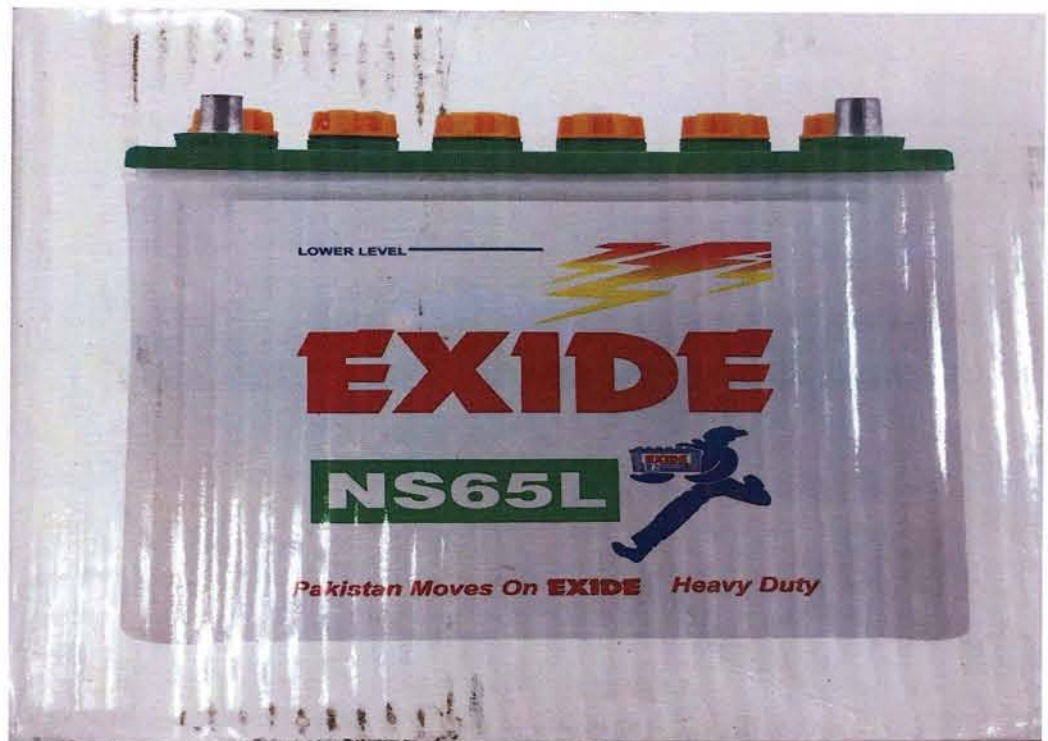
Battery Packaging

68. As discussed in paragraphs 27 to 30 above, the Undertaking No 3. provides all relevant and material information on battery body as well as the packaging. This claim was also confirmed by the Enquiry Committee during its market research as shown by the pictures displayed above. The Undertaking No 3 has displayed all the material

information pertinent to battery capacity on the body and packaging of the product. The Enquiry Committee is of the view that the Undertaking No 3 has not violated the provisions of Act. Therefore, no further action is warranted against it. The proceedings initiated against it may be filed to record.

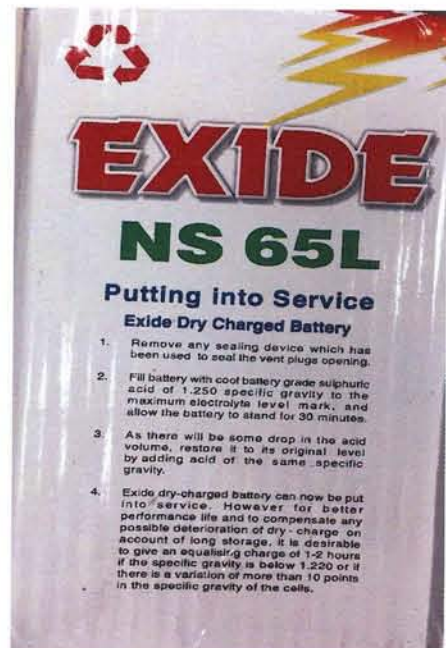
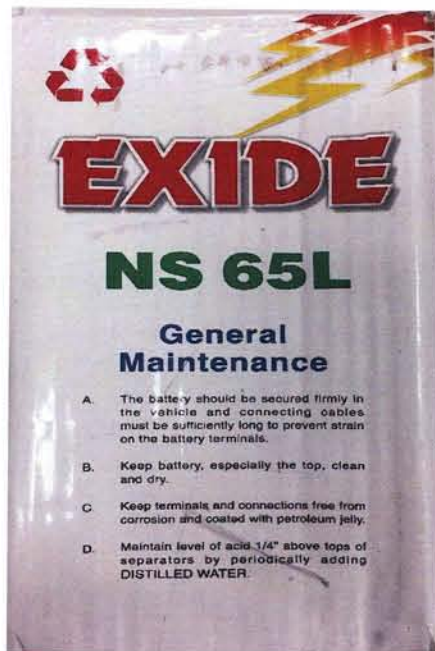
**D. EXIDE BATTERY AND FURUKAWA BATTERY (FB) BY EXIDE PAKISTAN LIMITED (The 'Undertaking No. 4')**

69. Below are the pictures of Undertaking No. 4's two branded products, their packaging and warranty cards:



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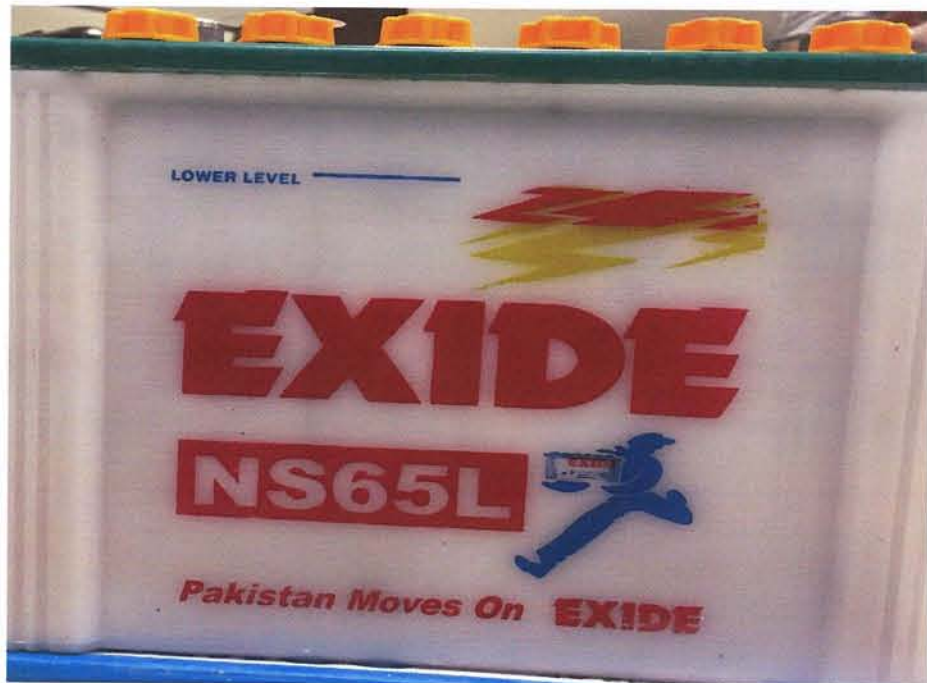


Battery Packaging (Exide)





Warranty Card



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Battery Body (Exide)

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Battery Body (Furukawa Battery-FB)



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Battery Packaging (Furukawa Battery-FB)

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**Warranty Card (Furukawa Battery-FB)**

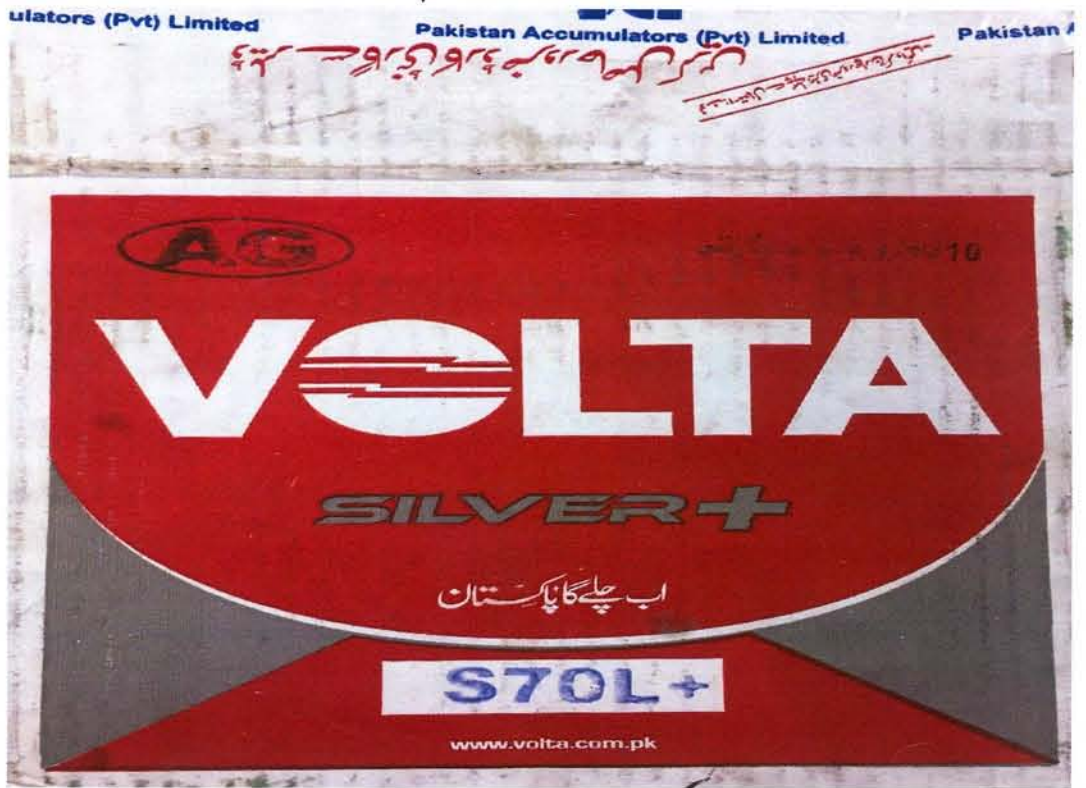
70. As discussed in paragraphs 32 to 34 above and taking into consideration the pictures of the two brands displayed above, the Undertaking No 4, as per the complaint and findings of the Enquiry Committee, acknowledged the fact that it does not print product capacity in terms of volts, CAA or AH on both of its products and their packaging. The Undertaking No 4 submitted that its packaging was in conformity with JIS Specifications which allows use of any self-generated number on batteries corresponding to their capacity. Nonetheless, lack of presentation of product capacity in terms of AH, CAA and volts amounts to omission of material information. This act, therefore, constitutes *prima facie* violation of Section 10 of the Act, in particular subsection (2), clause (b), as it is involved in distribution of false or misleading information to consumers, related to the price, character, properties, suitability for use, and quality of its goods.

**E. VOLTA BATTERY, OSAKA BATTERY AND FUJIKA BATTERY BY PAKISTAN ACCUMULATORS (PVT.) LIMITED (The 'Undertaking No. 5')**

71. Below are the pictures of Undertaking No. 5's three branded products, their packaging and warranty cards:



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Battery Packaging (Volta)

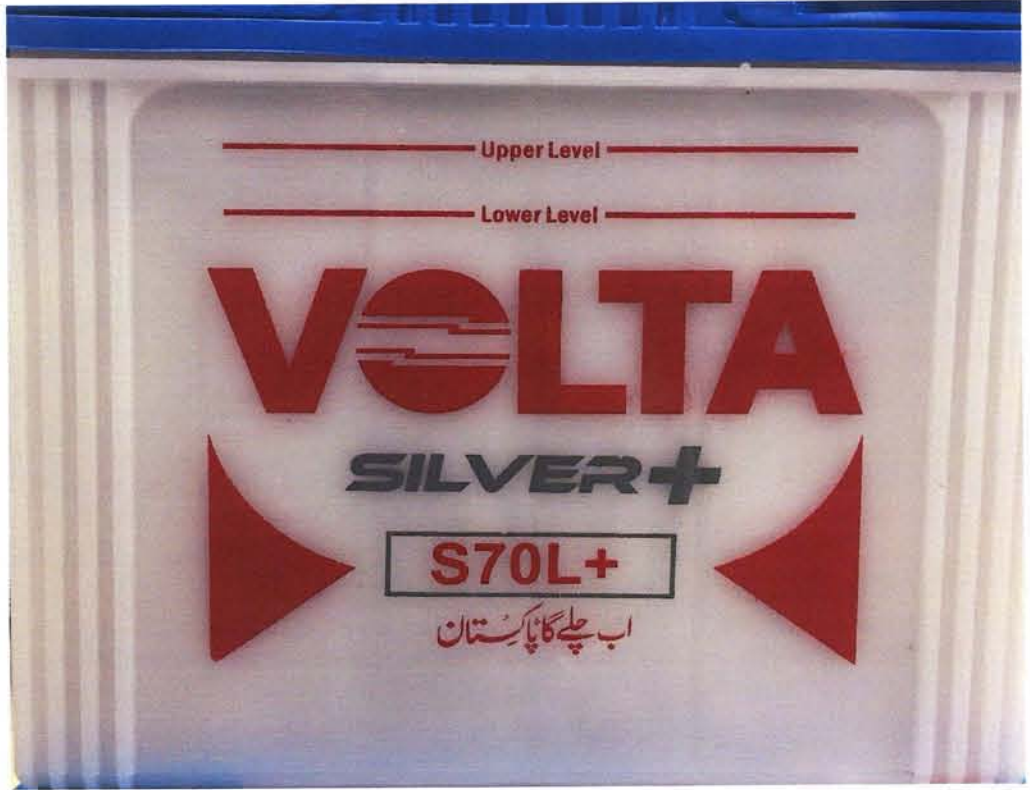


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Battery Body (Volta)

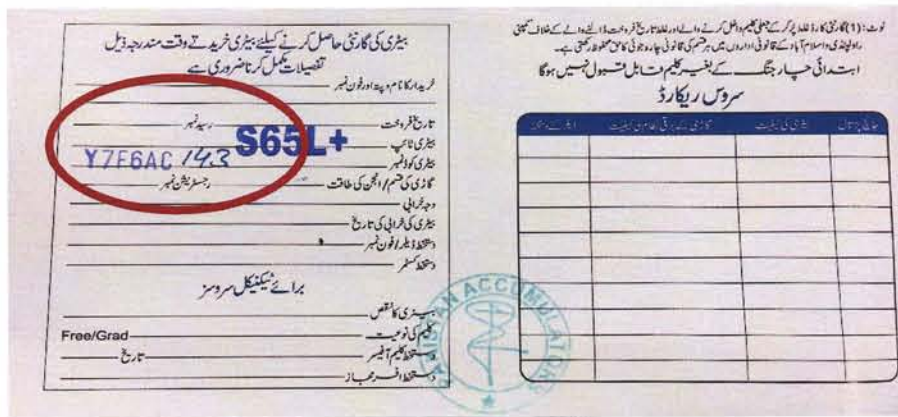
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Warranty Card (Volta)



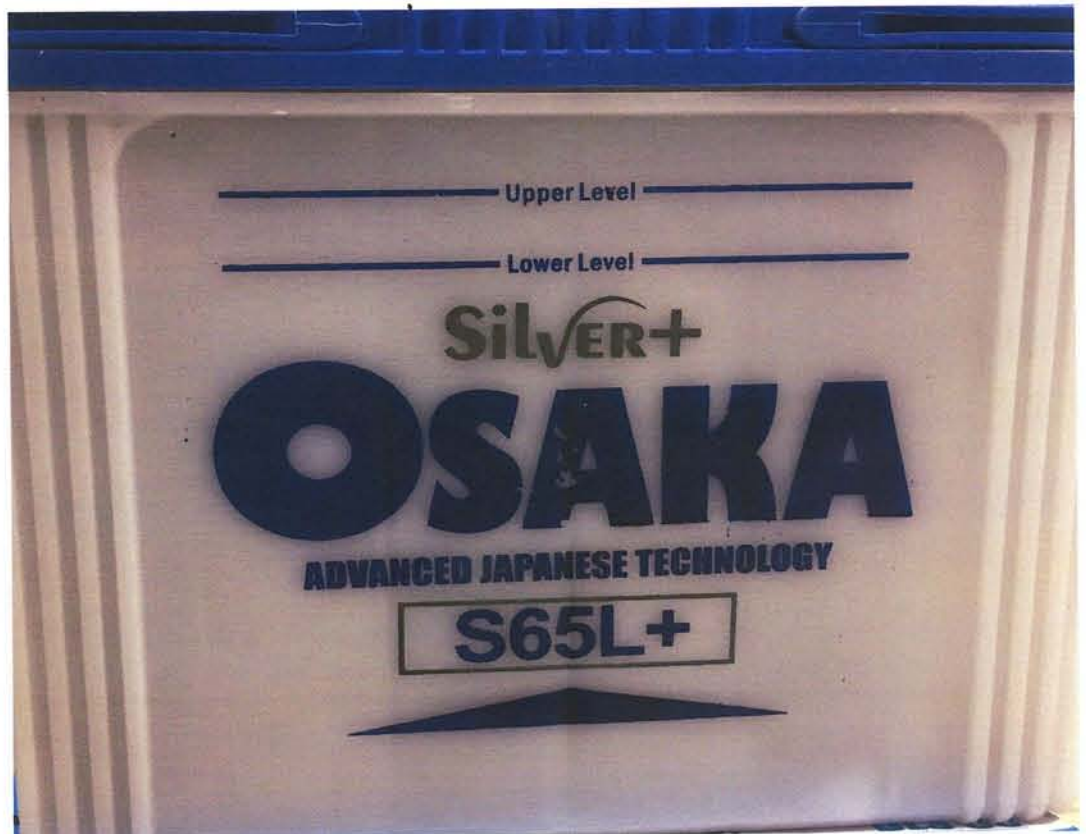
Warranty Card (Osaka)



Battery Top (Osaka)

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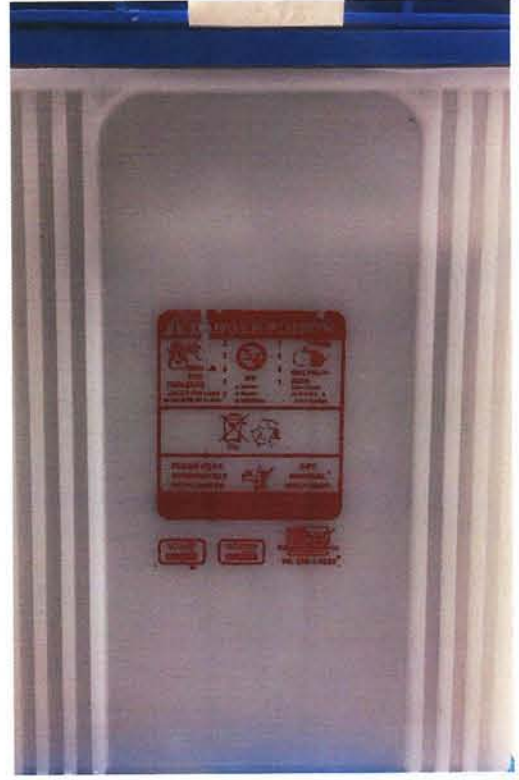
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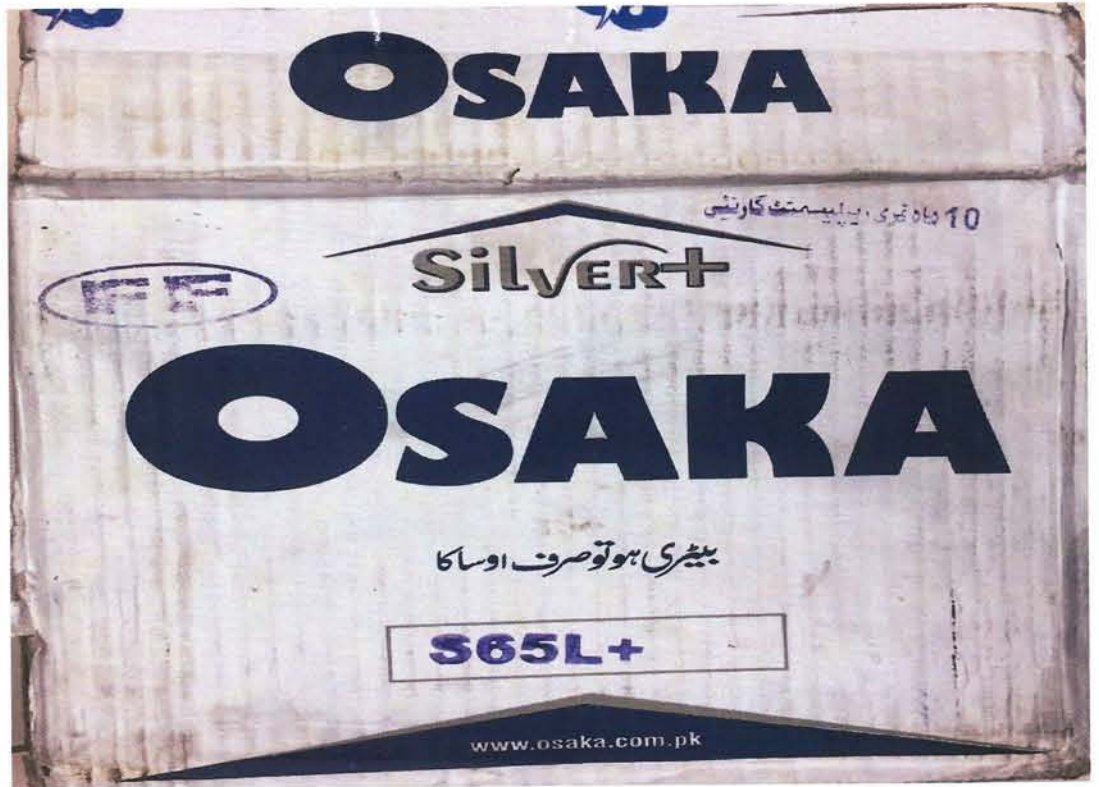
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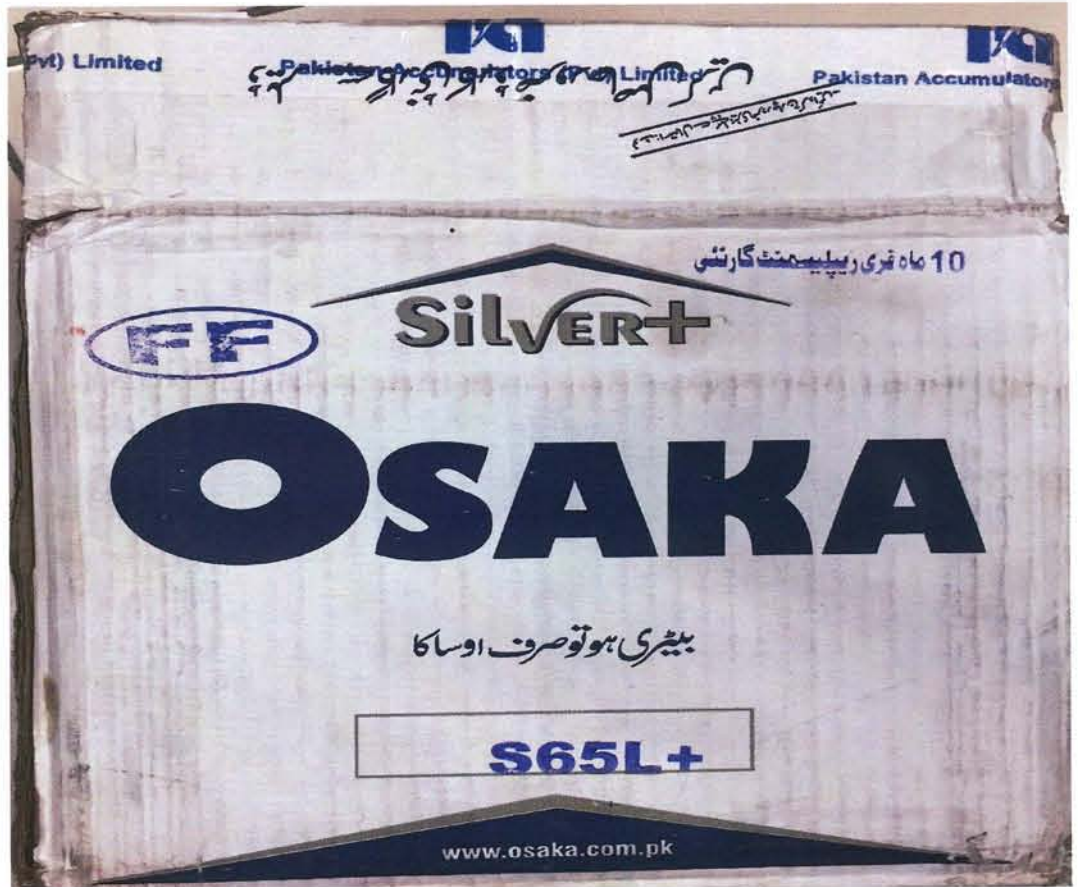
Battery Body (Osaka)



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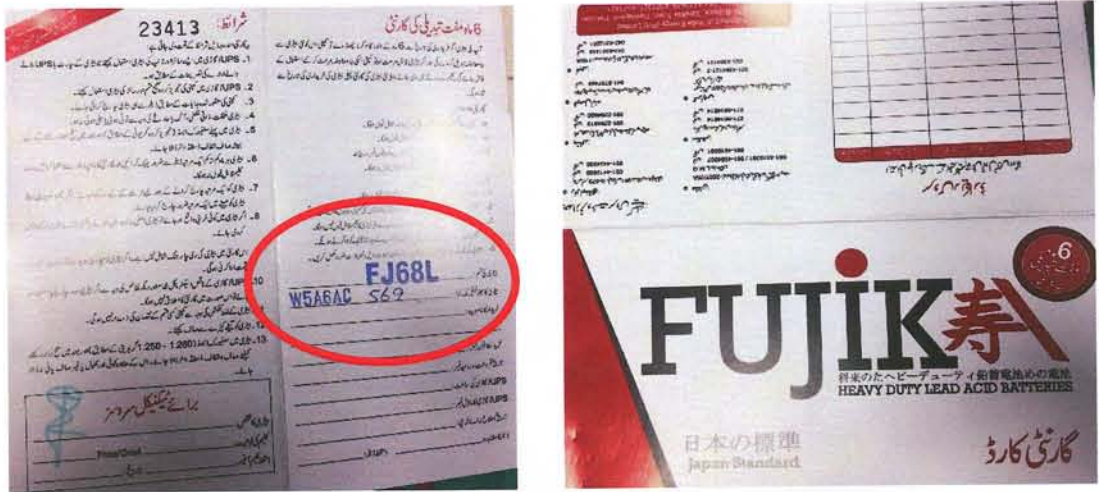
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Battery Packaging (Osaka)



Warranty Card (Fujika)



Battery Top (Fujika)

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Battery Body (Fujika)



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**Battery Packaging (Fujika)**

72. As discussed in paragraphs 36 to 39 above, the Undertaking No 5, as per the complaint and findings of the Enquiry Committee, does not print product capacity in terms of volts, CAA or AH on its products body. The Undertaking No 5 submitted that it does provide all necessary information on the price list. Moreover, it submitted that as per Sales Tax Act, 1990, it is not required to print product price and tax on the product.
73. However, taking into consideration the scope of this enquiry report, lack of display of product capacity in terms of AH, CAA and volts, on the battery body and packaging remains an act of omission of material information. Furthermore, this enquiry is not holding any undertaking accountable for not printing product prices and taxes on their products and their packaging. The relevant pictures presented above exhibit clearly that the Undertaking does not provide this vital information on any of its products or the relevant marketing material. Such conduct, therefore, constitutes *prima facie* violation of Section 10 of the Act, in particular sub-section (2), clause (b), as it is involved in distribution of false or misleading information to consumers, related to the price, character, properties, suitability for use, and quality of its goods.

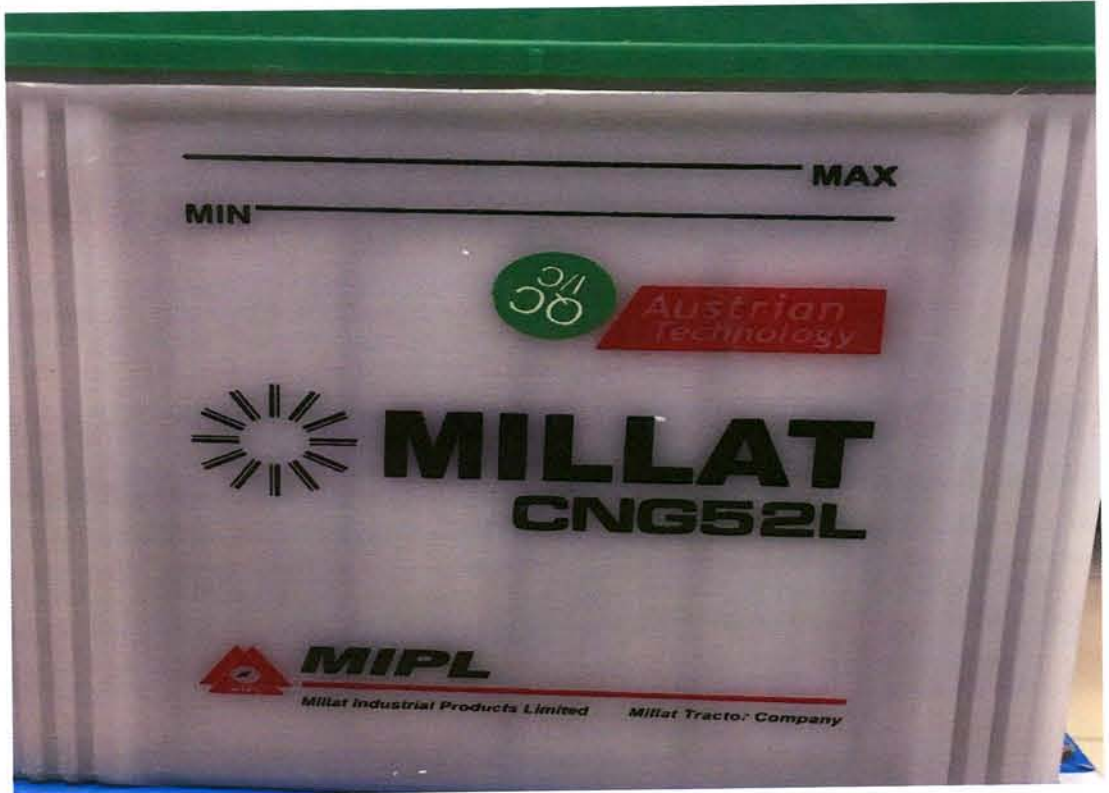
**F. MILLAT BATTERY BY MILLAT INDUSTRIAL PRODUCTS LIMITED (The ‘Undertaking No. 6’)**

74. Below are the pictures of the product, its packaging and warranty card of Undertaking No. 6:



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Battery Body



Warranty Card



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### Battery Packaging

75. As discussed in paragraphs 40 to 43 *ibid*, the Undertaking No.6 did not deny the allegations made in the complaint pertinent to provision of battery capacity on the battery body. The Undertaking No 6 endorsed the fact that it was a general market practice, especially adopted by the major players.
76. The Undertaking No 6, however, did reject the allegations that this information was not available on the website, etc. The Undertaking No 6 submitted evidence against this assertion which was further verified by the Enquiry Committee. Therefore, as far as the allegation pertaining to unavailability of crucial information on the website is concerned, it was proven that the Undertaking No 6 provided complete and detailed information covering all aspects and specifications of its products, such as battery type, capacity, dimensions, etc.
77. However, the main scope of this enquiry report is nonexistence of such vital information on the body of the battery and its packaging. In this matter, as acknowledged by the Undertaking No 6, product capacity is not being printed on the batteries.
78. Therefore, in light of the above discussion and taking into consideration the pictures produced above, such conduct of Undertaking No 6, constitutes *prima facie* violation of Section 10 of the Act, in particular sub-section (2), clause (b), as it is involved in

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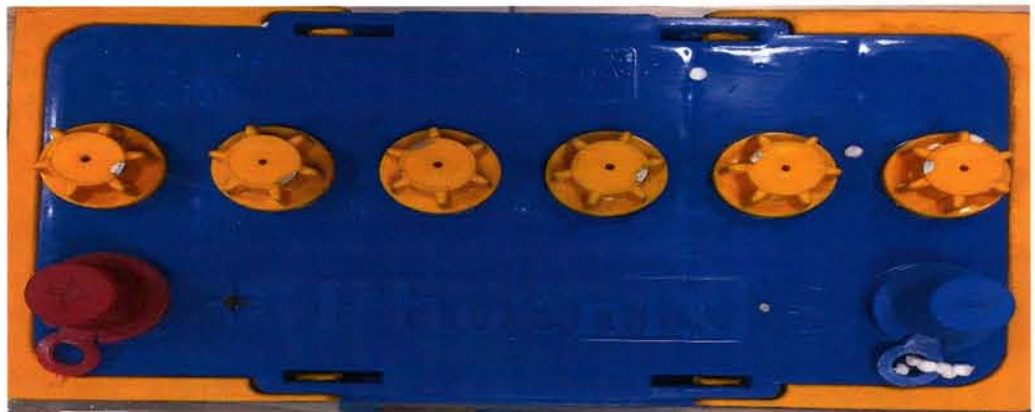
distribution of false or misleading information to consumers, related to the price, character, properties, suitability for use, and quality of its goods.

**G. PHOENIX BATTERIES BY CENTURY ENGINEERING INDUSTRIES (PRIVATE) LIMITED (The 'Undertaking No. 7')**

79. Below are the pictures of the product, its packaging and warranty card of Undertaking No. 7:

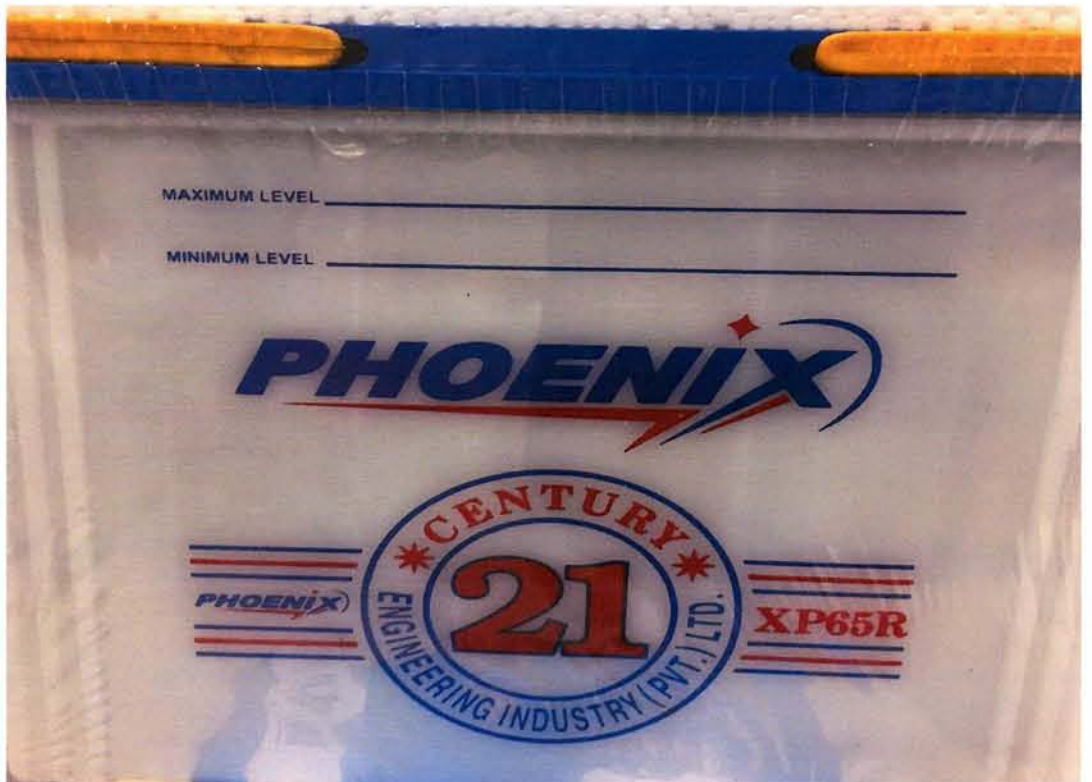
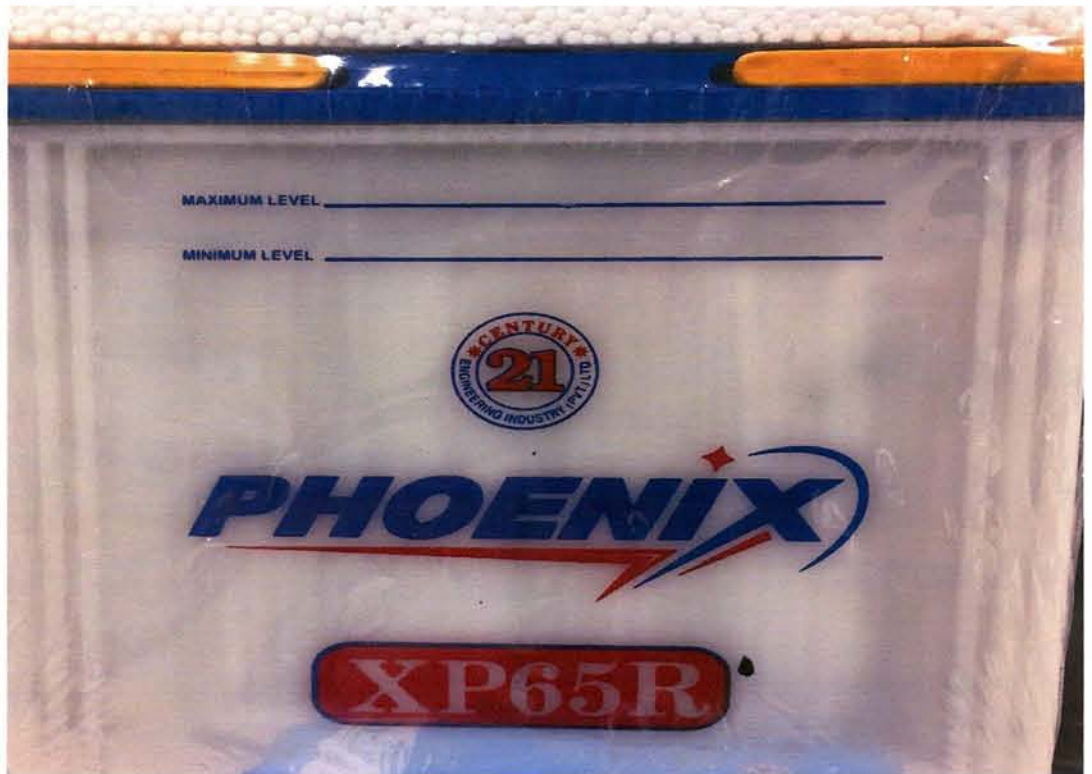


Warranty Card



Battery Top

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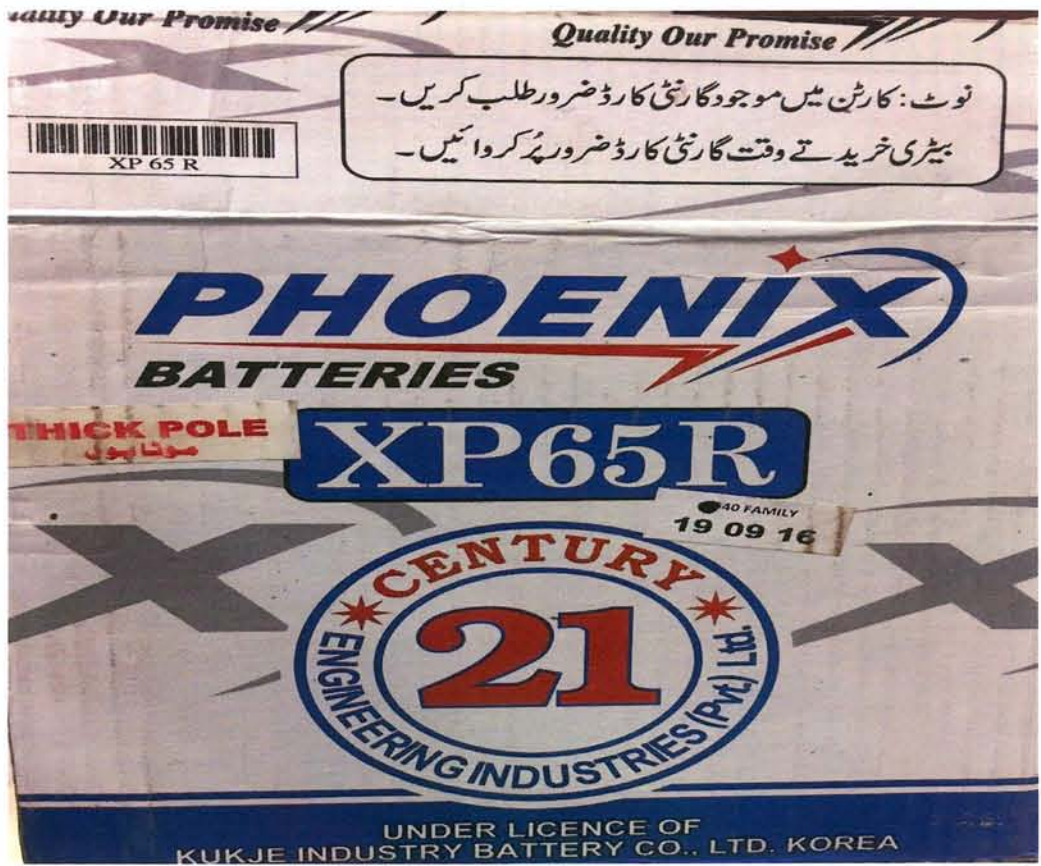
Battery Body

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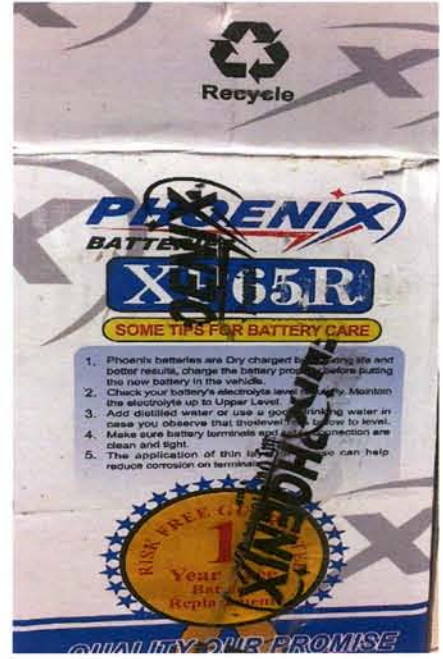




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### Battery Packaging

80. As discussed in paragraphs 44 and 45 above, the Undertaking No.7 did not submit any proof in opposition to the contentions of the Complainant and in support of its defense. It submitted that the relevant information was provided on the price list. However, as mentioned before, the nature of the product is such that it necessitates provision of material information like battery capacity on the battery body and its packaging which, as per the images provided above, it has failed to do. Therefore, lack of provision of essential information on the battery body results in distribution of misleading information which *prima facie* amounts to distribution of false or misleading information to consumers, related to the price, character, properties, suitability for use, and quality of its goods, in violation of Section 10, particularly sub-section (2), clause (b), of the Act.

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81. As violation of Section 10 (2) (b) of the Act leads towards distorted decision making by an ordinary consumer, the incorrect purchases as a result of misleading information is also directly capable of harming business interests of other competing undertakings whose products may not be purchased due to unavailability of complete information pertinent to characteristics, quality and the resultant price of the batteries. Therefore, by violating the provisions of Section 10 (2) (b) of the Act, the Undertakings may also be *prima facie* involved in violation of Section 10 (2) (a) of the Act.

82. In this reference, it was held in Commission's order in the matter of Zong and Ufone<sup>6</sup>;

*“What further needs to be appreciated is the fact that, for the purposes of deceptive marketing, actual deception need not be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency/potential to deceive and the capacity to mislead.”*

It is also necessary to note that to measure deception, proving actual consumer injury is not necessary. Mere probability of consumer injury is sufficient to prove deception which has already been determined in this enquiry report.

## RECOMMENDATIONS

83. In light of the above discussion, it has been established that display of battery capacity is a necessary conduct demanded from the Undertakings engaged in manufacturing of dry and lead-acid batteries. Moreover, in addition to international standards, the international practices reflected in the imported batteries also prove that imprinting batteries with battery capacity is a necessary practice that is being followed all over the world. Thus it is obligatory, for all the domestic manufacturers to provide such information clearly and conspicuously not only on the regular marketing material, such as brochures, websites, TVCs, warranty cards, etc., but also on the battery body and packaging itself.

84. The enforcement of such practices would not only reduce the probability of consumer injury, but it would also assist in protecting competing undertakings from anti-competitive behavior of the violating Undertakings.

<sup>6</sup> <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

85. In view of the above, it has been established that Undertaking No. 1, Undertaking No. 2, Undertaking No. 4, Undertaking No. 5, Undertaking No. 6 and Undertaking No. 7 have been found *prima facie* in violation of Section 10 (2) (a) and (b) of the Act.
86. Therefore, it is recommended that in the interest of the public at large, proceedings may be initiated against M/s Atlas Battery Limited, M/s Treet Corporation Limited, M/s Exide Pakistan Limited, M/s Pakistan Accumulators (Pvt) Limited, M/s Millat Industrial Products Limited and M/s Century Engineering Industries (Private) Limited, under provisions of Section 30 of the Act, in accordance with law, for *prima facie* violation of Section 10 of the Act.



(Fatima Shah)  
Management Executive  
Enquiry Officer



(Faiz-ur-Rehman)  
Assistant Director  
Enquiry Officer